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**Review Of Certain Aspects^{v6}
Of Public Housing Projects^{v7}
In' Nebraska** B-170838

Department of Housing
and Urban Development

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

089903

9/14/768

DEC. 31, 1970



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20518

B-170838

Dear Mr. Martin:

As requested in your letters of September 10 and October 12, 1970, we have examined into certain aspects of federally assisted public housing projects being constructed for the elderly in Nebraska under the low-rent public housing program administered by the Department of Housing and Urban Development (HUD).

The specific matters that we examined into included (1) the extent to which the architectural firm of George E. Clayton & Associates was involved in low-rent public housing projects in Nebraska, (2) the circumstances leading to the selection of the developer of the housing project for the elderly in Gibbon, Nebraska, and the basis for the change in project specifications by the Gibbon Housing Authority (Authority), (3) the disposition of, and the accounting for, a preliminary loan of \$3,900 made by HUD to the Authority, and (4) the propriety of HUD officials advising local housing authorities and architects that turnkey projects would be more readily funded than conventional projects. DL605942

We interviewed officials and reviewed records and files at the HUD Area Office at Omaha, Nebraska, and at the local housing authority at Gibbon, Nebraska. We also interviewed Mr. Lynn Vermeer of Bahr Hanna Vermeer, the architect for George Samson Company, one of the developers that submitted a proposal on the Gibbon project.

In summary, we found that (1) the firm of George E. Clayton & Associates was awarded one architectural contract for low-rent public housing in fiscal year 1970, (2) the selection of Mid-America Company as developer for the housing project for the elderly in Gibbon had been in accordance with HUD regulations, (3) the expenditure of preliminary loan funds by the Authority had been in accordance with the HUD-approved budget for these funds, and (4) turnkey projects were more readily approved and were currently favored by HUD headquarters because HUD believed that new housing starts could be produced in the shortest period of time under this method. DL605943

INVOLVEMENT OF GEORGE E. CLAYTON & ASSOCIATES
IN NEBRASKA LOW-RENT PUBLIC HOUSING PROJECTS

Our review of HUD files showed that applications for eight low-rent housing projects for the elderly in Nebraska had been approved by HUD in fiscal year 1970 and that architectural firms had been selected for all

eight projects. In addition, architects were selected also in fiscal year 1970 for seven other low-rent housing projects for the elderly for which applications had been approved in prior years. Of these 15 projects, nine were conventional projects and six were turnkey projects.

Contracts were awarded to 11 architectural firms for the above projects; the firm of Dean E. Arter & Associates received architectural contracts for five of the projects. The firm of George E. Clayton & Associates was selected as the architect for one project, the 26-unit project in Gibbon. Nine other firms were awarded contracts for the remaining nine projects.

SELECTION OF DEVELOPER FOR
THE GIBBON PROJECT

On December 31, 1969, HUD approved the development of 26 low-rent housing units for the elderly in Gibbon. The Authority, in accordance with HUD procedures regarding invitations for proposals, advertised for proposals in five newspapers on May 24 and May 31, 1970. The advertisements requested that interested builders and developers immediately contact the Authority for more specific information. The Authority sent letters describing the project to be constructed to interested parties and requested that written proposals be submitted no later than June 22, 1970. The letter emphasized that each proposal would be evaluated on its individual merits and would not be considered as a competitive bid.

The following proposals were received and opened by the Authority on June 22, 1970.

<u>Developer</u>	<u>Total project cost</u>
D & D Development Company (first proposal)	\$380,200
D & D Development Company (second proposal)	386,000
Roeder Brothers Construction	421,462
George Samson Company	348,100
Mid-America Company	380,000
Devco, Inc.	387,760

The Authority's board of commissioners interviewed representatives of the D & D Development Company, George Samson Company, and Mid-America Company, to further evaluate their proposals. Although HUD recommends that local authorities hire architects to assist in evaluating proposals, the Authority did not do so. Authority officials told us that members of the Authority had backgrounds in carpentry or building material sales and thus were qualified to evaluate the proposals.

In a letter dated July 1, 1970, the Authority notified the HUD Chicago Regional Office that Mid-America Company had been tentatively selected as the developer. The Authority, in accordance with HUD regulations, was required to advise HUD of its justification for the selection. The Authority gave the following reasons for selecting Mid-America Company.

1. The Authority preferred Mid-America Company's overall architectural design of the project.
2. The Mid-America Company proposal had definite plans for landscaping and had provided for more sidewalks from units to the community building, more closet and kitchen-cabinet areas in all units, and a large covered area over each front and rear entrance.
3. The Mid-America Company proposal also provided for fibershoen comfort-line tubs and shower enclosures for all units, drapes and shades for all units, 80-percent brick veneer, patio with brick dividers and center planter, six enclosed garbage stations with doors, and a master TV antenna system.
4. The Mid-America Company was a local developer and was within 30 miles of Gibbon.
5. Mid-America Company's building contractor had a permanent work force and large construction equipment and was highly recommended in the area.

The Authority gave the following reasons for not accepting the proposal of the George Samson Company.

1. George Samson Company did not have a permanent work force and lacked large equipment for constructing large projects.
2. George Samson Company had no exact plan for sidewalk layout or landscaping.
3. It felt that George Samson Company's proposal had been hastily prepared and that, as a result, the estimated costs in its proposal were much lower than those in other proposals.
4. The Mid-America Company proposal, which was the second lowest, included items that were not included in George Samson Company's proposal.

The Authority, in a letter dated July 9, 1970, submitted to the HUD Chicago Regional Office a listing of items which were included in Mid-America Company's proposal but not in George Samson Company's proposal. Mid-America Company's estimated cost for these items totaled \$29,340.

HUD Chicago Regional Office officials reviewed the proposals and recommended George Samson Company as the developer on the basis of the lower price, the superior site plan, and the larger community building. HUD instructed the Authority to reinterview representatives of the two companies and to resubmit its selection of the developer. Subsequently, the Authority met with representatives of George Samson Company and Mid-America Company. Mid-America Company's representatives stated that they could see no reason to change their proposal, because they felt that their proposal provided the items needed for the project.

Authority officials advised representatives of George Samson Company that one of the reasons for the selection of Mid-America Company was the extra items included in Mid-America Company's proposal. The representatives of George Samson Company agreed that the extra items in the Mid-America Company proposal had not been included in George Samson Company's proposal. In a letter to the Authority dated July 24, 1970, however, these representatives stated that they could not submit prices for the extra items because they were being placed in an unethical, competitive-bidding situation by having to provide for a project identical to Mid-America Company's project. The letter stated also that the George Samson Company, if selected as the developer for the project, would negotiate a price for any revisions and additions but would not alter the price included in its proposal at that time since all proposals had been made public. On July 30, 1970, however, Mr. Lynn Vermeer, the architect for George Samson Company, submitted to HUD prices totaling \$20,375 for the additional items.

The HUD Low-Rent Housing Turnkey Handbook dated June 1969 directs that evaluation of the price of construction contained in proposals be in terms of whether the prices are within a reasonable range and that there be no price negotiation at that stage. Authority officials stated that they believed that prices should not have been negotiated with either of the two companies before one was selected as the developer but that HUD had requested the Authority to renegotiate the items that were considered to be the difference between the two proposals.

On July 29, 1970, the Authority resubmitted to HUD its selection of Mid-America Company. HUD reviewed the proposals and the list of additional items submitted by the architect for George Samson Company.

HUD correspondence showed that during a telephone conversation on August 25, 1970, the Authority had been advised by HUD that it still recommended George Samson Company but that HUD would permit the Authority to add \$17,175 (HUD's estimated cost of the extra items) to George Samson Company's proposal. HUD stated that the Authority could select Mid-America Company but that the Authority must contribute \$14,725 (the difference between the Mid-America Company proposal and the George Samson Company proposal plus \$17,175).

In a letter to the Authority dated August 30, 1970, Mid-America Company reduced its proposal by \$14,725. The items to which the reduction applied were not specified. On September 11, 1970, HUD approved the selection of Mid-America Company as the developer.

On October 12, 1970, the Authority, after reviewing and evaluating two independent cost estimates which were required by HUD regulations in order to confirm the reasonableness of the developer's proposed price, voted unanimously to accept Mid-America Company's revised proposal of \$365,275 since it was less than both estimates.

Regarding the evaluation of proposals, HUD's regulations direct that each proposal be evaluated on the basis of (1) site--its location, cost, and other factors, (2) construction--its design and cost, (3) credentials of the developers, and (4) the developer's and/or builder's statement of disclosure of interest. HUD's regulations require also that the developer selected by the local housing authority be approved by HUD.

A HUD production representative, formerly of HUD's Chicago Regional Office, who had worked on the Gibbon project stated that a local housing authority does not have to accept the lowest proposal but must justify its selection on the basis of other factors. He said that specifications for turnkey projects do not have to be as detailed as for conventional projects, that developers' proposals may differ in general design and site location, and that developers may add extra items to make their proposals more attractive. He stated also that the proposals submitted by George Samson Company and Mid-America Company had been reasonable and had met the Authority's specifications.

As to the legality of the turnkey method of procurement, we wish to point out that the Gibbon project was not being procured by a Federal agency but by a local housing authority established under State law. Although Federal financial assistance is contemplated during the course

of the procurement pursuant to the United States Code (42 U.S.C. 1401 et seq.) that statute does not, by express terms or implication, require that Federal competitive-bidding procedures be followed because of such assistance. Moreover the HUD regulations in the Code of Federal Regulations (24 CFR 1520 et seq.) that relate to the low-rent housing program do not require that competitive-bidding procedures be utilized in procurement of projects by local housing authorities. Since competitive-bidding procedures are not prescribed by law or regulation, requirements for such procedures, even if they existed, would merely reflect an agency's policy.

We note that the propriety of the use of the turnkey method rather than conventional competitive bidding techniques by local housing authorities has been considered by at least two State supreme courts. In both cases the courts held that State competitive-bidding statutes were not applicable to federally assisted turnkey housing and that awards of contracts for such housing were not restricted to the lowest responsible bidders. See Lehigh Construction Co. v. Housing Authority of the City of Orange, 267 A. 2d 41 (N.J., 1970) and Commissioner of Labor and Industries v. Lawrence Housing Authority, 261 NE 2d 331 (Mass., 1970).

Moreover, it appears that the construction of turnkey housing in Nebraska is authorized by section 14-1430 of the Nebraska Reissue Revised Statutes of 1943, which section is similar to the statute construed in the Lawrence Housing Authority case and which empowers any local housing authority to:

"***do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction***of any housing project by such authority." (Underscoring supplied.)

We believe that the selection by the Authority of the Mid-America Company as the developer for the Gibbon project was in accordance with HUD regulations which do not require the selection of the developer who submits the lowest proposal. HUD regulations stipulate that the Authority justify its selection, which it did to the satisfaction of the HUD regional office.

USE OF PRELIMINARY LOAN FUNDS
BY THE AUTHORITY

HUD makes preliminary loans to local housing authorities to cover the cost of preliminary surveys, site options, housing authority administrative expenses, and planning and preparation of a development program for low-rent housing projects. The amount of a loan is limited to \$400 multiplied by the number of housing units to be included in the project.

Our review showed that a preliminary loan to the Authority of \$3,900--\$3,100 budgeted by HUD for administrative costs of the Authority and \$800 budgeted for project planning costs--was approved by HUD on March 20, 1970. Files of the Authority showed that the loan was received on April 22, 1970.

As of October 15, 1970, \$1,957.13 has been expended by the Authority in accordance with the approved preliminary loan budget. The expenditures were for administrative costs, including travel, secretary fees, legal fees, advertising, bonding of commissioners, telephone, postage, and other minor expenses.

TURNKEY PROJECTS MORE READILY FUNDED
THAN CONVENTIONAL PROJECTS
BECAUSE OF HUD PREFERENCE

HUD officials stated that they advise architects and local housing authorities that turnkey projects can be funded more readily than conventional projects. They stated also that HUD's Washington office budgets funds and housing units between turnkey and conventional projects on a ratio of 2 to 1. HUD's budget estimates for fiscal years 1970 and 1971 showed that HUD had estimated for funding approximately twice as many dwelling units for turnkey projects as for conventional projects. A HUD official stated that the number of available units in conventional projects were reduced more readily than in turnkey projects and that, if a local housing authority preferred a conventional project, the project might have to be postponed until the next fiscal year.

A HUD Washington official stated that there was no fixed ratio of turnkey to conventional projects and that the budget estimates for units for each type of project differed from year to year. The turnkey method is presently favored by HUD, because new housing starts can be produced in the shortest period of time by the turnkey method.

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We did not obtain formal written comments from any of the parties involved in the matters discussed in the report.

E-170838

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James B. Auer". The signature is written in a cursive style with a large initial "J".

Comptroller General
of the United States

The Honorable Dave Martin
House of Representatives